# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1894.**

No. 175.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, PLAINTIFF IN ERROR,

*vs.*

M. H. TRIMBLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

**FILED MAY 18, 1891.**

**(14,652.)**

LAW ASSOCIATION
OF
PHILADELPHIA.

(14,652.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1894.

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1 UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judges of the supreme court of the State of Arkansas, Greeting:

Because in the record, pleadings, and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Arkansas before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between M. H. Trimble, plaintiff, and St. Louis and San Francisco R'y, defendants, wherein was drawn in question the construction and validity of certain clauses, articles, sections, and amendments of the Constitution of and laws of the United States of America, and the decision was against title, rights, privileges, and franchises specially set up, based upon claims and founded under and upon such clauses, articles, sections, and amendments of the Constitution of and laws of the United States, a manifest error hath happened, to the great damage of the said St. Louis and San Francisco R'y Co., as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of Jan'y, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

{ The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A. }

RALPH L. GOODRICH,
*Clerk of the Circuit Court of the United States of America, Eastern District of Arkansas.*

Allowed by—
S. R. COCKRILL, *Chief Justice.*

STATE OF ARKANSAS:

In the Supreme Court.

I, William P. Campbell, clerk of the supreme court of the State of Arkansas, hereby certify that, in obedience to the mandate of the foregoing writ of error, a duly-certified transcript, under the seal of said court, of the record and proceedings in the cause therein stated, with all things concerning the same, is hereto attached.

In testimony whereof I hereto set my hand as clerk of said supreme court and affix the seal of said court, at my office, in the city of Little Rock, this the 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

3 The United States of America to M. H. Trimble, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein St. Louis and San Francisco Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. R. Cockrill, S. *R. Cockrill*, judge of the supreme court of the States of Arkansas, this 17th day of January, A. D. 1891.

Seal of the Supreme Court of Arkansas.

S. R. COCKRILL.

3½ I hereby acknowledge service of the within citation this 16th day of Feb'y, A. D. 1891.

DAN'L W. JONES,
*Attorney for Appellee in this Cause in Supreme Court of Arkansas.*

4 Please before the Honorable John S. Little, judge of the Sebastian circuit court within and for the Fort Smith district of Sebastian county, at the April term, 1888, the following among other proceedings were had, to wit:

*Complaint.*

Sebastian Circuit Court for the Fort Smith District, Fall Term, 1887.

M. H. TRIMBLE, Plaintiff,
*vs.*
ST. LOUIS AND SAN FRANCISCO R'Y CO., Defendant. } Complaint at Law.

The plaintiff, M. H. Trimble, complains of the defendant, the St. Louis and San Francisco Railway Company, and says that said defendant is a corporation doing and carrying on the business of a common carrier upon a public highway of the State of Arkansas and is engaged in the businees of conveying for hire passengers and freight on its line, a portion of which line of railroad and public highway being through the Fort Smith district of Sebastian county and through Crawford county, both in the State of Arkansas, and said road is over 75 miles in length; that heretofore, to wit, on the 10th day of June, 1887, this plaintiff, desiring to avail himself of

his right to travel upon defendant's road from the town of Van Buren to Lilly station, both in the county of Crawford and State of Arkansas, and both being regular established stations of said company for accepting and discharging passengers, and the distance between said stations being seven miles, did tender to one George Williams, the ticket agent of defendant at Van Buren, the sum of twenty-five cents and demand of him a ticket directing the agent of defendants to transport him from Van Buren to Lilly station, and in all ways followed and observed the customs and regulations of defendant company, but said agent refused to give plaintiff such ticket; and after the refusal of said ticket agent to furnish plaintiff with a ticket he boarded defendant company's train, which
5 said train was on its way from Van Buren to Lilly station, and upon the request of one Gregg, the conductor of defendant's train, for his fare this plaintiff tendered him the sum of twenty-five cents, in lawful money of the United States, and demanded transportation to said Lilly station from said Van Buren, but said Gregg, as such agent of defendant, did refuse to transport him and refused to allow him to further ride upon defendant's train, and after having gone the distance of one-fourth of one mile from said Van Buren station did, with force and arms, eject this plaintiff from defendant's train, refusing to accept said sum of money and refusing to further carry plaintiff upon said train. Plaintiff says that he is a commercial traveler and necessarily dependent in his business upon prompt and *and* speedy transportation from point to point, and that upon the aforesaid day when plaintiff was ejected from defendant's car plaintiff was going to Lilly station to proceed from there to Alma, from which station a hack line runs to Alma to meet an important engagement. By which wrongful act of defendant plaintiff was caused to miss his connections and to take unusual and expensive means of reaching his destination and greatly injuring his business and impairing his standing with his employers; and by said wrongful act of defendant plaintiff was much mortified and humiliated, his feelings and sensibilities were hurt and wounded by said violent and unlawful act of defendant; all of which was to the great damage an injury of plaintiff; wherefore he prays judgment for the sum of fifteen hundred ($1,500) dollars.

II.

Came the plaintiff here, M. H. Trimble, and complains of the defendant, the St. Louis and San Francisco Railway Company, and says that defendant is a corporation doing and carrying — business as a common carrier and especially engaged in the business of carrying and transporting passengers and freight for hire, the said cor-
6 porations doing business in the State of Arkansas, and a portion of its line lying and being in the Fort Smith district of Sebastian Co. and also in the county of Crawford, both in said State, and the line of defendant's road is over seventy-five miles in length; and heretofore, to wit, on the 10th day of June, 1887, this plaintiff was

at the town of Van Buren, in the county of Crawford, and desiring to avail himself of his right to travel on defendant's train and desiring to go to Lilly station, a point also in said Crawford county, the distance of seven miles from Van Buren, said Van Buren and Lilly station being two regularly established stations of said defendant company; and plaintiff tendered to one George Williams, an agent of defendant, whose duty, among others, was to furnish tickets to parties desiring to travel over defendant's road upon their paying the proper amount for the same, the sum of twenty-five cents in lawful money of the United States, and demanded a ticket to transport him to Lilly station, but said Williams, a ticket agent of defendant, refused to issue him a ticket as demanded, but charged the sum of thirty-five cents for such ticket. Plaintiff boarded the train of defendant, which was going past Lilly station, and remained upon the same for about the distance of one-fourth of a mile, when Gregg, the conductor of said train and agent of defendant, demanded of plaintiff the sum of thirty-five cents to transport plaintiff and less than 150 lbs. of baggage the said distance of seven miles, all of the same being upon a connecting line of said defendant's road; and upon the refusal of plaintiff to pay said unlawful charge the defendant, by its agent, forcibly ejected him. All of which unlawful acts of plaintiff were against the form of the statute in such cases made and provided. Wherefore plaintiff prays judgment for the further sum of three hundred ($300) dollars and the costs of this suit and for the sum of one hundred dollars for attorneys' fees and other relief.

JONES & MARTIN,
COOK, LUCE & HILL,
*Attorneys for Plaintiff.*

I, M. H. Trimble, do on oath state that the allegations in the above and foregoing complaint are true to the best of his knowledge and belief.

M. H. TRIMBLE.

Sworn to and subscribed before me this 18th day of April, 1888.

J. O. STALCUP, *Clerk.*
W. K. STALCUP, *D. C.*

Filed Jul- 19th, 1887.

J. O. STALCUP, *Clerk.*

*Summons Issued.*

Upon the filing of the above complaint the clerk issued a summons for the defendant, which was duly served July 19th, 1887, by delivering a true copy of the same to Chas. Hall, as agent for the def't, at Fort Smith, Arkansas.

*Motion to Verify Complaint.*

October Term, 1887.

(Caption omitted.)

OCTOBER 12TH, 1887.

On this day defendant filed a motion to verify complaint.

(Copy of motion.)

Now comes defendant herein and moves the court that plaintiff be required to verify his complaint.

CLAYTON & BRIZZOLARI,
*Att'ys for Def't.*

*Motion to Require Plaintiff to Elect.*

April Term, 1888.

MAY 1ST, 188–.

On this day defendant filed a motion to require plaintiff to elect upon which cause of action filed herein he would stand.

(Copy of motion to elect.)

(Caption omitted.)

8 *Motion to Elect.*

Now comes the defendant in the above-entitled cause and moves the court that the plaintiff be required to elect upon which count of his complaint he will rely on.

CLAYTON, BRIZZOLARI & FORRESTER,
*Att'ys for Def't.*

MAY 3RD, 1888.

*Motion — Elect Sustained. Plaintiff Excepted.*

(Caption omitted.)

On this day defendant's motion to require plaintiff to elect came on to be heard, on consideration whereof the same was by the court sustained, and the plaintiff electing to stand on second count, the first count was by the court stricken out, and plaintiff excepted at the time.

*Demurrer to Answer.*

(Copy of demurrer.)

(Caption omitted.)

Now comes the plaintiff herein and demurs to the 2nd, 4th, 5th, 6th, 7th, and 9th paragraphs of the answer of the defendant herein, and for cause says that said above-mentioned paragraphs, nor either of them, state facts sufficient to constitute a defense to said action.

COOK, LUCE & HILL,
*Att'ys for Pl'ff.*

(Endorsed:) Filed in open court May 10, '88. J. C. Stalcup, clerk by W. K. Stalcup, D. C.

MAY 17, 1888.

*Judgment on Demurrer.*

(Caption omitted.)

On this day comes on cause to be heard this cause, both sides appearing, by their attorneys, and announcing ready for trial, and plaintiff demurred to counts 4, 5, 6, 7, & 9 of defendant's answer, which was by the court sustained, and said counts stricken from said answer, and defendant excepted at the time, and a jury being waived, both parties agreed to submit the cause to the court
9 sitting as a jury, and when the court had heard the evidence introduced, agreed statement of facts, and agreement of counsel it found for plaintiff in the sum of $100, and allowed an attorney's fee of twenty-five dollars for his attorney of record.

*Judgment. Appeal Granted.*

It is, therefore, considered by the court that plaintiff, M. H. Trimble, recover of defendant, St. Louis and San Francisco Railway Company, said sum of $100 and $25, attorney's fees, to be taxed as costs herein, and all costs of this execution, and def't filed motion for a new trial, which was overruled, and defendant excepted and prayed an appeal to the Supreme Court, which was granted, and def't allowed 60 days to file bill of exceptions.

This order was made on the 10th inst. and not entered of record, the same is entered now for then.

*Copy of Bill of Exceptions.*

(Caption omitted.)

Bill of exceptions.

Be it remembered that in the above-entitled cause the following among other proceedings were had at and during the regular April, 1888, term thereof:

On the 10th day of May, 1888, plaintiff filed demurrer to 2nd, 4, 5, 6, 7, & 9 paragraphs of defendant's answer; which demurrer was in words and figures as follows, see page —:

Which demurrer was argued and, after being considered by the court, was sustained as to the second, 4th, 5th, 6th, 7th, and 9th paragraphs in said answer, and said paragraphs 2nd, 4th, 5th, 6th, 7th, and 9th of said defendant's answer were struck out; to which ruling and order of the court in sustaining the demurrer and striking out each and all of the paragraphs aforesaid in said answer defendant then and there at the time excepted.

That on the trial of this cause in said court, on the 10th day of —, 1888, at the April term thereof, the said cause was submitted, by agreement of the counsel, to the court sitting as a jury,
10 upon the following agreement of facts; which agreement was in words and figures following, to wit:

*Agreed Statement of Facts.*

(Caption omitted.)

By the agreement of counsel for plaintiff and defendant this cause was submitted to the court sitting as a jury and the followings facts agreed on submission of the same to the court after the court had excluded the evidence offered by defendant.

Defendant offered to prove by witnesses, in support of the issues arising on the complaint and said 1st paragraph, each and every fact set forth and alleged in the 2, 3, 4, 5, 6, & 7 & 9 paragraphs of answer which had been stricken out on demurrer from defendant's answer.

That plaintiff applied to the agent of the defendant at a station in Arkansas to another station in Arkansas and tendered the sum of money, in lawful coin of the U. S., for a ticket between the stations required to be paid, at the rate of 3 cents per mile, but said agent refused the same and demanded the sum of 5 cents per mile and would not issue a ticket unless the same was paid, and plaintiff refused to pay the sum, and the plaintiff immediately thereafter got on defendant's train at the aforesaid station and tendered the conductor of said train the sum of three cents per mile, in lawful money of the U. S., for the distance he desired to travel, and the said conductor refused said sum and demanded of plaintiff the sum of five cents per mile for the distance *of* he desired to travel; that the stations in complaint mentioned are upon the railroad operated by defendant in the State of Arkansas and regular passenger stations and the defendant operates and controls a railroad of more than 75 continuous miles in the State of Arkansas; that the defendant i*n* a corporation duly organized by the State of Missouri, and not of Arkansas, and is chartered under an act of Congress, and

11 that allegations in paragraph- 3 & 8 of defendant's answer as to the organization, consolidation, and sale of railway and respective lines are true; that defendant, believing the act to be unconstitutional and void and as soon as the supreme court held it *void*, it reduced its fare in conformity thereto from 5 to 3 cents per mile for passenger travel, and the following facts were further agreed to *as* by the constitution of the State of Arkansas *as* it is and was at the dates in plaintiff's complaint mentioned *and* provided that the legislature of said State should have and possess the power to make and determine the rules of and for its proceedings; that the legislature, whose pretended enactment is set forth in said petition, *to* make, determine, and publish rules for its government, and which were known as the joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

Rule 8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

Rule 9. No bills, resolutions, or memorials shall be sent to the gov-

ernor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

Rule 10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors they may discover, and to report the same forthwith to their respective houses.

Rule 11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the
12 house of representatives and then by the president of the senate.

Rule 12. When a bill has been signed by the speaker of the house of representatives and president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some other member of the committee, shall report to each house the day on which bill was delivered, which report shall be entered on the journal of the respective houses.

That the pretended enactment aforesaid was never enrolled by the clerk of the house in the manner required by said rule seven.

That said pretended act or bill was never reported to either house of representatives or the senate of said State of Arkansas within three days after its passage.

That said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled.

That said pretended bill was never examined or compared with the engrossed bill by the joint committee of the house of representatives and senate as required by said rule ten.

That said pretended bill was never signed by the speaker of the house of representatives or the president of the senate as required by rule eleven.

That said pretended bill was not delivered to the governor of the State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either house of representatives or senate of said State on the day the same was delivered or any other day as required by rule twelve.

That the certain act of the legislature was clearly and fairly enrolled without obliteration or interlineation by the enrolling clerk of the house in which it originated, in accordance with said
13 rule 7, and was returned to each house by said committee within three days after its passage as required by rule eight and was examined by a joint committee, composed of three members of each house, who carefully compared the enrolled with the engrossed bills as required by said rule ten, and, after examination and report by the enrolling committee, said bill was first signed by the speaker of the house of representatives and then by the president of the senate as required by rule eleven.

Whereupon it was delivered to the governor by the joint committee on enrolled bills, and, through their chairman, reported to each house the day on which said bill was delivered to the governor

as aforesaid, was, after adjournment of the legislature, changed, altered, and amended in material matters by interlineation and interpolating therein provisions not contained in said bill so enrolled, returned, examined, signed, and delivered to the governor as aforesaid, and that before such change, alteration, and amendment said bill as enrolled did not provide for a maximum rate of charges, and that the bill so wrongfully and illegally interlined, interpolated, changed, altered, and amended as aforesaid is a pretended law in plaintiff's complaint mentioned.

That this self same act was passed upon by the supreme court of the State of Arkansas in case of Dow *v.* Beidelman.

We agree to the foregoing facts.

COOK, LUCE & HILL, *Att'ys for Pl'ff.*
CLAYTON, BRIZZOLARI & FORRESTER,
*Att'ys for Def't.*

(Endorsed:) Filed in open court May 10th, 1888. J. C. Stalcup, clerk, by W. K. Stalcup, D. C.

14 Which aforesaid agreed statement of facts was entered into by counsel after defendant had produced competent witnesses and by them offered to prove to the court, in support of the issues raised by defendant's answer, that, first, the actual cost of the defendant's railway and eac- of the consolidating lines which it purchased was over fifty thousand dollars per mile; second, that the actual amount of the capital stock of each of the roads in question was as follows: St. Louis and San Francisco railway, $40,000 per mile; St. Louis, Arkansas and Texas Railway Company, $40,000 per mile; St. Louis, Ark. & Texas Railway of Missouri, $40,000 per mile; St. Louis, Arkansas and Texas Railway Company of Arkansas, $40,000 per mile; Missouri, Arkansas and Southern Railway Company, $40,000 per mile, and all of which consisted in cash actually paid into the treasury of said railway company; third, that in addition *of* said money so paid into the treasury of said railway companies, said railways were mortgaged for large amounts, to wit, the sum of more than $500,000 to the *bona fide* holders of their bonds secured thereby on which it was required to pay annually large sums of money, and which sums of money so borrowed, secured as aforesaid, had been used in addition to the capital stock of said company in the actual construction thereof; fourth, that the actual gross earnings of the said Missouri, Arkansas and Texas Railway, consolidated, and the defendant's line never exceeded and for the next three years cannot exceed the sum of three thousand dollars per mile per annum; fifth, that of such earnings it has and must in the future of necessity expend and actually pay out in cash the sum of $2,400 per mile per annum for the maintenance of its trains and railway and taxes thereon; that the actual cost of carrying passengers over the line of railroad in the plaintiff's complaint mentioned, and the actual cost of carrying plaintiff would have
15 been at the time and in the manner in his complaint

described, three and one-half cents per mile for which said passenger was to be carried.

That the actual cost to carry plaintiff from Van Buren to Lilly would have been 24 cents and 5 mills.

That the difference between the cost of carrying such passsenger—to wit, 3½ cents per mile and the amount which was demanded by the defendant, to wit, five cents per mile—would not yield the defendant three per cent. on the actual paid-in capital stock of any of the companies consolidated as in the manner set forth. Sixth. That the length of the Missouri, Arkansas and Southern railway is 64 miles.

Defendant offered to prove by said witnesses in support to the issues each and every fact set forth and alleged in the 2nd, 3rd, 4th, 5th, six, seventh, eighth, and ninth paragraphs of said defendant's answer.

Upon the offering of such proof and each and every part and portion of the same plaintiff objected to the admission of such testimony as incompetent and irrelevant; which objection was by the court sustained and each and every part thereof excluded; to which ruling of the court in excluding said evidence and each and every part and portion thereof the defendant at the time then and there excepted.

Whereupon, saving its exceptions to the said ruling of the court in excluding said evidence and not waiving the same, the said defendant and plaintiff entered into the agreement of the aforesaid agreed statement of facts. The above, together with the aforesaid agreed statement of facts, was all the evidence offered by either party. Whereupon the court found a verdict for the said plaintiffs.

Whereupon the said defendant, at said term of said court, on the 10th day of May, 1888, filed a motion for a new trial in words and figures following, to wit:

16 *Motion for New Trial.*

(Caption omitted.)

Comes the defendant herein and moves the court to grant it a new trial and set aside the judgment rendered in the above-entitled cause, and for reasons thereof assigns the following:

First. Because said court erred in sustaining plaintiff's demurrer to the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th paragraphs of defendant's answer and striking the same from answer on said demurrer.

Second. Because the court erred in excluing proper, competent, and relevant testimony material to the issues in this cause offered by defendant.

Third. Because the court erred in refusing to allow defendant to introduce competent and relevant testimony material to the cause.

Fourth. Because the findings and verdict of the court is contrary to the evidence and not sustained by sufficient evidence.

Fifth. Because the findings, decision, and verdict of the court are contrary to law.

CLAYTON, BRIZZOLARI & FORRESTER,
*Att'ys for Def't.*

(Endorsed:) Filed in oper court May 10th, 1888. J. C. Stalcup, clerk, by W. K. Stalcup, D. C.

*Motion for New Trial Overruled & Appeal.*

Which said motion afterwards, on the 10th day of May, A. D. 1888, came for hearing, whereupon the court overruled the same; to which ruling of the court the said defendant at the time excepted and prayed the court that its exceptions might be allowed, and that it have 60 days wherein to file this bill of exceptions, and prayed an appeal to the supreme court of the State of Arkansas, which was done, and this its bill of exceptions was
17 signed and sealed entered on this the 9th day of July, A. D. 1888, and made a part of the record.

JOHN S. LITTLE,
*Judge of 12th Judicial Ct., Ark's.*

(Endorsed:) Filed July 10th, 1888. J. C. Stalcup, clerk, by W. K. Stalcup, D. C.

*Cost Bill.*

| | |
|---|---|
| Clerk circuit court (Stalcup) | $7 25 |
| Transcript | 6 50 |
| Sheriff | 90 |
| Total | 14 65 |
| *Contra.* Paid by defendant (clerk's cost) | $4 50 |
| Paid by defendant, transcript | 6 50 |
| | 11 00 |

STATE OF ARKANSAS, }
*County of Sebastian, Ft. Smith Dist.* }

In testimony that the foregoing transcript of pages is truly taken and copied from the record and papers — above-styled cause as appears of record in my office, T. J. Stalcup, clerk of the circuit court in and for said county, hereto sign my name as such clerk and affix the seal of said court, at my office, on this 7th of August, 1888.

[L. S.] J. C. STALCUP, *Clerk*,

Transcript filed August 9th, 1888.

W. P. CAMPBELL, *Clerk.*

18 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 27th day, being the fourth Monday, of May, A. D. 1889, amongst others, were the following proceedings, to wit, on the 10th day of February, 1889, a day of said term:

*Submission.*

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| ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* M. H. TRIMBLE, Appellee. | Appeal from Sebastian Circuit Court. |

Come the appellant and appellee, by their respective attorneys, and this cause is submitted upon the abstract and briefs filed in No. 858, and by the court taken under advisement.

*Judgment of the Supreme Court.*

| | |
|---|---|
| ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* M. H. TRIMBLE, Appellee. | Appeal from Sebastian Circuit Court. |

Judgment sup. court.

This cause came on to be heard upon the transcript of the record of the circuit court of Sebastian county, and was argued by counsel. On consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is, therefore, considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

And it appearing to the court that said appellant, with Jas. H. Mershon and M. Joel as sureties, has filed a supersedeas bond in this cause, it is further considered that said appellee re-

19 cover of said appellant and Jas. H. Mershon and M. Joel the sum of one hundred and twenty-five dollars, with interest at 6 per cent. per annum from the 17th day of May, A. D. 1888, the amount of judgment of said circuit court, and the further sum of twelve dollars and fifty cents, being ten per cent. thereon, and costs.

It is further considered that said appellee recover of said appellant and said sureties all his costs in this court and the court below in this cause expended and have execution thereof as well as of said judgment.

20 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y, Appellant, *vs.* M. H. TRIMBLE, Appellee. } Application for Allowance of Writ of Error.

To the Hon. S. R. Cockrill, chief justice of the supreme court of Arkansas:

Comes the St. Louis and San Francisco R'y Co., by its attorneys, Clayton, Brizzolari & Forrester, and complains that in the record and proceedings, and also in the rendition of a judgment in a suit between M. H. Trimble, plaintiff, and the St. Louis and San Francisco R'y Co., defendant, in the supreme court of the State of Arkansas, being the highest court of law or equity in said State in which a decision could be rendered in said suit, in which a final judgment was rendered against it, the aforesaid defendant, on the 3rd day of January, A. D. 1891, who was the appellant in said proceedings, wherein was drawn in question the construction and validity of the section 10, art. 1st, and the 5th and 14th amendments of the Constitution of the United States of America and the statutes of the United States, and the decision was against the title, rights, privileges, and franchises specially set up, based upon and claimed and founded upon the construction and validity of the aforesaid sections, articles, and amendments of the Constitution of — United States of America and the aforesaid statutes of the United States—all of which appears in the record and pleadings and proceedings in said suit—manifest error hath happened, to the great dam-ge of the St. Louis & San Francisco R'y Co.:

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

CLAYTON, BRIZZOLARA & FORRESTER,
*Attorneys.*

LITTLE ROCK, ARK., *Jan'y 17th*, 1891.

Allowed.

S. R. COCKRILL,
*Chief Justice.*

21 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y, Appellant, *vs.* M. H. TRIMBLE, Appellee. } Bond.

Know all men by these presents that we, James Brizzolara & Henry M. Cooper, are held and firmly bound unto M. H. Trimble in the full and just sum of two thousand dollars, to be paid to the said M. H. Trimble, his executors, administrators, or assigns; to which payment, well and truly to be *named*, we bind ourselves

and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 17th day of January, A. D. 1891.

Whereas lately, at a session of the supreme court of the State of Arkansas, in a suit pending in said court between M. H. Trimble, plaintiff, and The St. Louis and San Francisco R'y Co., defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit and a citation directed to the said M. H. Trimble, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next:

Now, therefore, the condition of the above obligation is such that if the said St. Louis and San Francisco R'y shall prosecute its said writ of error to effect and answer all damages and costs — it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES BRIZZOLARA. [SEAL.]
HENRY M. COOPER. [SEAL.]

Approved:
S. R. COCKRILL, *Ch. Justice, Arks.*

22 STATE OF ARKANSAS:

In the Supreme Court.

I, William P. Campbell, clerk of the supreme court of the State of Arkansas, hereby certify that the foregoing 21 pages contain a full, true, and complete transcript of the record and proceedings in said court in the cause therein stated, except the briefs of counsel.

In testimony whereof I hereto set my hand as clerk and affix the seal of said court at my office, in Little Rock, Arkansas, this the 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

Endorsed on cover: Case No. 14,652. Arkansas supreme court. No. 175. The St. Louis & San Francisco Railway Company, plaintiff in error, *vs.* M. H. Trimble. Filed May 18, 1891.

# IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error, *vs.* M. H. TRIMBLE. } No. 175.

It is hereby stipulated that the attached copy of the answer of the St. Louis and San Francisco Railway Company may be filed and considered by the Supreme Court of the United States as part of the record in said cause, as if originally incorporated therein.

E. D. KENNA,
A. T. BRITTON,
A. B. BROWNE,
*Att'ys for Plaintiff in Error.*
A. H. GARLAND AND
JOS. M. HILL,
*Att'ys for Defendant in Error.*

November 22, 1894.

W. H. H. Clayton. James Brizzolara.

Clayton & Brizzolara, attorneys-at-law, rooms 1, 2, and 3, over 423, corner Garrison Ave. and N. Fifth St.

FORT SMITH, ARK., *Nov.* 13*th*, 1894.

We certify that the within is our office copy of the answer filed in case of M. H. Trimble *vs.* St. L. & S. F. R'y Co., No. 22, common law, in circuit court of Sebastian county for Fort Smith district, except the first paragraph of said answer, which paragraph was a mere special & specific denial of each and every allegation contained in plaintiff's complaint, a copy of which first paragraph was in our office, but has been mislaid.

Respectfully,
CLAYTON, BRIZZOLARA & FORRESTER.

II.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the pretended law referred to in said complaint as "An act to regulate the rates of charges for the carriage of passengers by railroads," and alleged to have been approved April 4th, 1887, was never passed by the legislature of the State of Arkansas, nor signed or approved by the governor of said State in the manner required by the constitution and laws thereof.

And defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's complaint men-

tioned provided, that the legislature of said State should have and possess the power to make and determine the rules of and for its proceedings; that the legislature, whose pretended enactment is set forth in said petition, did make, determine and publish rules for its government, and which were known as the "joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887." That by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses, it shall be enrolled by the enrolling clerk of the house in which it originated.

8. All bills must be enrolled and returned to each house by the enrolling committee, within three days after their passage.

9. No bill, resolution or memorial shall be sent to the governor for his approval, unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

10. When a bill is enrolled it shall be examined by a joint committee composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with engrossed bills, correct any errors they may discover, and to report the same forthwith to their respective houses.

11. After examination and report by the enrolling committee each bill shall be signed first by the speaker of the house of representatives and then by the president of the senate.

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And defendant further avers that the pretended enactment aforesaid, was never enrolled by the clerk of the house in the manner required by said rule 7; that said pretended act or bill was never reported to either house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as required by said rule 10; that said pretended bill was never signed by the speaker of the house of representatives or the president of the senate, as required by rule 11; that said pretended bill was not delivered to the governor of said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or senate of said State on the day the same was delivered or any other day as required by rule 12; and that said pretended bill referred to in plaintiff's complaint as hereinbefore stated, is null, of no effect and void.

That the certain act of the legislature was clearly and fairly enrolled without obliteration or interlineation by the enrolling clerk of the house in which it originated, in accordance with said rule 7,

and was returned to each house by said committee within three days after its passage as required by rule 8, and was examined by a joint committee composed of three members of each house, who carefully compared the enrolled with the engrossed bills, as required by said rule 10, and after examination and on report by the enrolling committee, said bill was first signed by the speaker of the house of representatives and then by the president of the senate, as required by rule 11; whereupon it was delivered to the governor by the joint committee on enrolled bills, and through their chairman reported to each house the day on which said bill was delivered to the governor as aforesaid, was without authority of law after adjournment of the legislature changed, altered and amended in material matters by interlineation and by interpolating therein provisions not contained in said bill as enrolled, returned, examined, signed and delivered to the governor, as aforesaid, and that before such change, alteration and amendment, said bill as enrolled did not provide for a maximum rate of charges, and that the bill so wrongfully and illegally interlined, interpolated, changed, altered and amended, as aforesaid is the pretended law in plaintiff's complaint mentioned.

Wherefore the aforesaid pretended act of the legislature is null, of no effect, and void.

III.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the stations of Van Buren and Lilly, in said complaint mentioned are on the line of the Missouri, Arkansas & Southern railway, for the purpose of constructing which the Missouri, Arkansas & Southern Railway Company was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the town of Fayetteville, Arkansas, thence southwestwardly to Fort Smith in said State.

That by the statutes of said State in force at the time of the incorporation of said railway company, as aforesaid, it was provided that said company should have the right to regulate the time, manner in which passengers and property should be transported, and the tolls and compensation to be paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that, while the legislature might, when any such railroad should be opened for use, from time to time, alter and reduce the rates of tolls, fares, freights or other profits upon such road, yet it was further provided that the same should not without the consent of the corporation, be so reduced as to produce for said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended, to be made by the secretary of state, he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did accrue to said company, its successors and assigns

were granted without limitation, restriction or control, the right to fix such rates of fares as to it should seem meet and proper.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State, existing under either general or special laws, and owning railroads constructed wholly *are* in part, which when completed and connected would form one continuous line of railroad, continuing and running in the same general direction, were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road with all the powers, rights, privileges and immunities which belonged to or rested upon either of the companies making such consolidation.

That said Missouri, Arkansas & Southern Railway Company was connected at its northern terminus with the railway of the St. Louis, Arkansas & Texas Railway Company, (of Arkansas), a corporation organized and existing under the general laws of the State of Arkansas.

That said St. Louis, Arkansas & Texas railway was connected at its northern terminus, on the boundary line of the State of Missouri with the railroad of the St. Louis, Arkansas & Texas Railroad Company, (of Missouri), a corporation organized under the laws of the State of Missouri, and running from said southern terminus, northwardly to the town of Plymouth in the State last aforesaid.

That at said time it was also provided by the laws of said State of Missouri which have remained and are yet in force, that any two or more companies in said State, existing under general or special laws, and owning railroads constructed wholly or in part which when completed and connected would form one continuous line of railway, continuing and running in the same general direction, were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges and immunities which rested upon either of the companies making such consolidation.

That on the 10th day of June, A. D., 1881, said three corporations last named consolidated their companies in the manner required by the laws of said States of Arkansas and Missouri into a corporation known as the St. Louis, Arkansas & Texas Railway Company, (Consolidated.)

That the railway of the said last-mentioned corporation connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis & San Francisco Railway Company, a corporation organized and existing under the general laws of the State of Missouri, and the several acts of the Congress of the United States, and formed therewith a connecting and continuous line of railway, running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of the State of Arkansas and of the State of

Missouri, that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad, with all its rights, privileges, franchises, immunities, real estate and other property, the whole or a part of which was in the State of Missouri, and constructed, owned or leased by any other company if the line or lines of the road or roads of said company were connected and continuous, and that any railroad corporation incorporated under the laws of said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease or otherwise dispose of the whole or any part of its railroad with all the rights, privileges, franchises and immunities thereunto belonging or in anywise appertaining to any connecting railroad or any railroad corporation then or thereafter organized under the laws of said State of Missouri, or of the United States, or of both.

That in the manner provided by the statutes of the States of Missouri and Arkansas, said St. Louis, Arkansas & Texas Railway Company, Consolidated, did on the 21st day of February, 1882, convey by good and sufficient deed, to the St. Louis & San Francisco Railway Company, all of its railway in said States of Arkansas and Missouri, together with all the rights, privileges, franchises and immunities thereunto belonging or appertaining.

That said St. Louis, Arkansas & Texas Railway Company, (Consolidated), and said Missouri, Arkansas & Southern Railway Company have at all times promptly and at the times required by law complied with the law requiring them to make an annual report to the secretary of state in the manner and at the time prescribed by law and at all times complied and fulfilled the conditions and terms of their respective charters.

And defendant avers that by the statutes of said State in force at the time, said State of Arkansas did enter into a contract with said Missouri, Arkansas & Southern Railway Company, by which the said State granted to said railroad company, its successors and assigns, the privilege and franchise of making and fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize a profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the laws of said State in force as aforesaid it was also provided that any company with which said Missouri, Arkansas & Southern Railway Company might consolidate, should possess all the franchises, powers, rights and privileges possessed at the time of such consolidation by said last-named company, that by reason and force thereof said St. Louis, Arkansas & Texas Railway Company, (Consolidated), acquired and possessed the same rights, powers, privileges and franchises which belonged or appe-tained to said Missouri, Arkansas & Southern Railway Company.

That at the time of such consolidation, said Missouri, Arkansas & Southern railway had not yet been completed; that the line pro-

posed, and which was afterward constructed, was laid out and surveyed through a mountainous and almost wholly uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was also said St. Louis, Arkansas & Texas Railway Company, (Consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's complaint mentioned are situated.

That relying upon the faith of the contract and agreement of said State of Arkansas with said railroad company aforesaid, that no regulation of its right to charge rates, fares or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., said St. Louis & San Francisco Railway Company, did purchase of said St. Louis, Arkansas & Texas Railway Company, (Consolidated), aforesaid, its line of railway, and did assume all its debts and obligations, in express consideration of obtaining the right and privilege to exercise the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually paid in.

That relying upon the faith of the contract aforesaid of said State with said companies, numerous parties were induced to and did buy the bonds of said St. Louis & San Francisco Railway Company secured upon the railway of the said Missouri, Arkansas & Southern Railway Company, and the franchises, privileges and immunities thereto appertaining.

That said railway, although completed for about five years, has never at any time earned an amount equal to three per cent. on the capital actually paid in; that the earnings of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in, and that if defendant is required to charge no more than three cents per mile on said line of railway, its net earnings will be so reduced that no profit whatever will insure to the owners thereof.

And defendant avers that the incorporation of the Missouri, Arkansas & Southern Railway Company; the consolidation of the railroads, as aforesaid; and the sale of the consolidated railroad to the defendant as well as the mortgaging thereof by the defendant company, were each and all contracts made and entered into upon the faith that the contract of the State of Arkansas with said several companies would not be broken.

Wherefore defendant avers that the pretended law in plaintiff's complaint mentioned is in violation of the laws and constitution of the State of Arkansas, impairs the obligations of the several contracts entered into upon the faith therefore, as aforesaid, in violation of section ten, article one of the Constitution of the United States, and is null and void.

IV.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the Missouri, Arkansas & Southern Railway Company, hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently to wit: in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas & Texas Railway Company, (of Missouri), and the St. Louis, Arkansas & Texas Railway Company, (of Arkansas), whereby it did make joint stock with said companies, forming the St. Louis, Arkansas & Texas Railway Company, (Consolidated.)

That subsequently thereto, said consolidated railway company, did in the manner required by the law in force at that time, sell and convey its railway, franchises, privileges and immunities thereto appertaining, to this defendant; and defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the said Missouri, Arkansas & Southern Railway Company, and said St. Louis, Arkansas & Texas Railway Company, (Consolidated), to which the defendant company has succeeded, and under which, and an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, it is authorized to and does now operate and maintain said line.

And defendant avers that by section six (6), article twelve (12), of the constitution of the State of Arkansas in force at the several dates hereinbefore mention-, it was provided, that no charter of any corporation should be altered, revoked, annulled or repealed in such a manner as to do injustice to the incorporators.

Defendant avers that if said rates of fare in plaintiff's complaint mentioned are established as a maximum beyond which this defendant cannot charge, it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's complaint mentioned are situated, is one which was highly expensive to construct, and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintainance of the road in condition, exceeds the price fixed as a maximum by the pretended law aforesaid, to wit: The sum of three cents per mile.

Wherefore, defendant says that said pretended act is unreasonable and does this defendant and the incorporators of said Missouri, Arkansas & Southern Railway Company, which constructed said line of railway, and their successors who succeeded to their rights and privileges, a material injustice, and is therefore in violation of said constitution of Arkansas, and null and void.

V.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the line of railway aforesaid in plaintiff's complaint mentioned, on which the stations therein described are located, was constructed through a country which neces-itated the expenditure of large sums of money, and which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, trestles and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the sum of three cents per mile; that the charge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this manner described, is a reasonable fare and just charge, and that such sum is not in excessive charge for transporting passengers; that the charge of five cents per mile not being excessive, and the charge of three cents per mile being unreasonable and unjust, said pretended law is illegal and void.

VI.

Defendant for another and further answer to the complaint of plaintiff herein, avers, that said pretended act discriminates between railroads of the same class, in this, that railroads of seventy-five miles or less in length owned by separate corporation-, and not operated by corporations which own other lines of railroads are permitted, under the provisions thereof, to charge the sum of five cents per mile, while railroads of the same length and same class which may be operated or controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discrimination between different roads of the same class and is therefore in conflict with and in violation of article 11 of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the line of railroad therein described is and was at the dates therein mentioned, by the acts of the Congress of the United States, declared to be a post and military route and national public highway of the United States for postal, military and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the

Congress of the United States to itself, and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarrented and illegal, and that by reason thereof said pretended act in plaintiff's complaint mentioned is null and void as to this defendant.

VIII.

Defendant further answering, says, that the continuity of the defendant's railway between the stations of Fort Smith and Lillie is broken by the Arkansas river, across which has been constructed a railroad bridge, with the approaches thereto, connecting on either side with the tracks of the defendant's railway, and forming therewith a continuous line of railway running from Fayetteville to Fort Smith, both in the State of Arkansas; that said bridge was constructed and caused to be constructed, under the provisions and authority of an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, by the defendant company; that by the provision of said act there was expressly reserved to the defendant company or the Secretary of War of the United States, the sole and exclusive right to fix and control the rates of fares and tolls which should be charged upon said bridge and for carrying or transporting freight or passengers thereover; that the defendant company and the Secretary of War has heretofore and before the dates in plaintiff's complaint mentioned had fixed, published and announced a tariff of rates which should be charged for carrying or transporting freight or passengers over said bridge, and that by such tariff the price and sum of forty cents was fixed as the rate which should be charged solely for carrying each passenger over said bridge and the approaches thereto belonging, and that such tariff was at the several dates mentioned in plaintiff's complaint and is still in force; that of the amount charged plaintiff forty cents thereof was solely for carrying him across said bridge and the approaches thereto belonging, and such charge was duly authorized by said act of Congress of the United States of America hereinbefore mentioned, and any of the legislation of the State of Arkansas conflicting with said act of Congress is null and void and of no effect.

Wherefore, defendant prays that it be discharged and have judgment for its costs herein laid out and expended.

IX.

And for another and further answer to the complaint of plaintiff herein, defendant avers that by the laws of said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as though fully set out in this count, it was provided, that after the consolidation or sale of any line of railway to any connecting line, there should remain and appertain to said line so consolidated all the rights, privileges, franchises and immunities, liabilities and obligations which appertained or belonged to said company before such

consolidation, and that its condition for all purposes should remain the same as if no such consolidation had been effected; that said Missouri, Arkansas & Southern Railway Company is less than seventy-five miles in length; and defendant avers that such being the case, and the said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length, the said defendant railway company had the right to charge thereon a sum not exceeding five cents per mile.

X.

Defendant for another and further answer to the complaint of plaintiff herein, says that if the plaintiff was carried by defendant, as in his complaint mentioned, it was in pursuance of an agreement and understanding between himself and his attorneys herein that he should be carried for the sole purpose of imposing upon said railway company the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas, and that any sum which he might recover herein is, under the agreement aforesaid, to be divided between himself and his attorneys herein; and defendant avers that said plaintiff was induced and encouraged to said action by such attorneys for the purpose aforesaid, and that said plaintiff herein was not a passenger for ordinary purposes but for the sole purpose aforesaid and no other.

Wherefore, defendant says that the action herein sought to be maintained is opposed to public policy and being champertous, the plaintiff should not be allowed to recover.

XI.

Defendant for another and separate answer to the complaint of plaintiff herein, says, that *of* any sum which the plaintiff herein may have paid the defendant company for any services rendered by it in the carriage and transportation of the property and the carriage and transportation of the plaintiff as a passenger, or otherwise, was voluntarily paid without protest or objection on the part of the plaintiff.

Wherefore, defendant says that the plaintiff should not upon the facts in his petition stated, be allowed to recover herein.

Wherefore, defendant having fully answered prays to be hence dismissed with all its costs in its behalf laid out and expended.

JOHN O'DAY AND
CLAYTON, BRIZZOLARA & FORRESTER,
*Attorneys for Defendant.*

[Endorsed:] Case No. 14,652. Supreme Court U. S., October term, 1894. Term No., 175. The St. Louis and San Francisco Railway Co., P. E., *vs.* M. H. Trimble. Stipulation & addition to record. Filed Nov. 22, 1894.

# IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,
*vs.*
M. H. TRIMBLE.
No. 175.

It is hereby stipulated that the attached copy of the answer of the St. Louis and San Francisco Railway Company may be filed and considered by the Supreme Court of the United States as part of the record in said cause, as if originally incorporated therein.

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A. T. BRITTON,
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*Att'ys for Plaintiff in Error.*
A. H. GARLAND AND
JOS. M. HILL,
*Att'ys for Defendant in Error.*

November 22, 1894.

W. H. H. Clayton. James Brizzolara.

Clayton & Brizzolara, attorneys-at-law, rooms 1, 2, and 3, over 423, corner Garrison Ave. and N. Fifth St.

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Respectfully,
CLAYTON, BRIZZOLARA & FORRESTER.

II.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the pretended law referred to in said complaint as "An act to regulate the rates of charges for the carriage of passengers by railroads," and alleged to have been approved April 4th, 1887, was never passed by the legislature of the State of Arkansas, nor signed or approved by the governor of said State in the manner required by the constitution and laws thereof.

And defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's complaint men-

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And defendant further avers that the pretended enactment aforesaid, was never enrolled by the clerk of the house in the manner required by said rule 7; that said pretended act or bill was never reported to either house of representatives or the senate of said State of Arkansas within three days after its passage; that said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as required by said rule 10; that said pretended bill was never signed by the speaker of the house of representatives or the president of the senate, as required by rule 11; that said pretended bill was not delivered to the governor of said State of Arkansas by a joint committee on enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or senate of said State on the day the same was delivered or any other day as required by rule 12; and that said pretended bill referred to in plaintiff's complaint as hereinbefore stated, is null, of no effect and void.

That the certain act of the legislature was clearly and fairly enrolled without obliteration or interlineation by the enrolling clerk of the house in which it originated, in accordance with said rule 7,

and was returned to each house by said committee within three days after its passage as required by rule 8, and was examined by a joint committee composed of three members of each house, who carefully compared the enrolled with the engrossed bills, as required by said rule 10, and after examination and on report by the enrolling committee, said bill was first signed by the speaker of the house of representatives and then by the president of the senate, as required by rule 11; whereupon it was delivered to the governor by the joint committee on enrolled bills, and through their chairman reported to each house the day on which said bill was delivered to the governor as aforesaid, was without authority of law after adjournment of the legislature changed, altered and amended in material matters by interlineation and by interpolating therein provisions not contained in said bill as enrolled, returned, examined, signed and delivered to the governor, as aforesaid, and that before such change, alteration and amendment, said bill as enrolled did not provide for a maximum rate of charges, and that the bill so wrongfully and illegally interlined, interpolated, changed, altered and amended, as aforesaid is the pretended law in plaintiff's complaint mentioned.

Wherefore the aforesaid pretended act of the legislature is null, of no effect, and void.

III.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the stations of Van Buren and Lilly, in said complaint mentioned are on the line of the Missouri, Arkansas & Southern railway, for the purpose of constructing which the Missouri, Arkansas & Southern Railway Company was organized on the 16th day of August, 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the town of Fayetteville, Arkansas, thence southwestwardly to Fort Smith in said State.

That by the statutes of said State in force at the time of the incorporation of said railway company, as aforesaid, it was provided that said company should have the right to regulate the time, manner in which passengers and property should be transported, and the tolls and compensation to be paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that, while the legislature might, when any such railroad should be opened for use, from time to time, alter and reduce the rates of tolls, fares, freights or other profits upon such road, yet it was further provided that the same should not without the consent of the corporation, be so reduced as to produce for said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended, to be made by the secretary of state, he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did accrue to said company, its successors and assigns

were granted without limitation, restriction or control, the right to fix such rates of fares as to it should seem meet and proper.

That at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State, existing under either general or special laws, and owning railroads constructed wholly *are* in part, which when completed and connected would form one continuous line of railroad, continuing and running in the same general direction, were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road with all the powers, rights, privileges and immunities which belonged to or rested upon either of the companies making such consolidation.

That said Missouri, Arkansas & Southern Railway Company was connected at its northern terminus with the railway of the St. Louis, Arkansas & Texas Railway Company, (of Arkansas), a corporation organized and existing under the general laws of the State of Arkansas.

That said St. Louis, Arkansas & Texas railway was connected at its northern terminus, on the boundary line of the State of Missouri with the railroad of the St. Louis, Arkansas & Texas Railroad Company, (of Missouri), a corporation organized under the laws of the State of Missouri, and running from said southern terminus, northwardly to the town of Plymouth in the State last aforesaid.

That at said time it was also provided by the laws of said State of Missouri which have remained and are yet in force, that any two or more companies in said State, existing under general or special laws, and owning railroads constructed wholly or in part which when completed and connected would form one continuous line of railway, continuing and running in the same general direction, were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges and immunities which rested upon either of the companies making such consolidation.

That on the 10th day of June, A. D., 1881, said three corporations last named consolidated their companies in the manner required by the laws of said States of Arkansas and Missouri into a corporation known as the St. Louis, Arkansas & Texas Railway Company, (Consolidated.)

That the railway of the said last-mentioned corporation connected at the town of Plymouth, its northern terminus, with the railway of the St. Louis & San Francisco Railway Company, a corporation organized and existing under the general laws of the State of Missouri, and the several acts of the Congress of the United States, and formed therewith a connecting and continuous line of railway, running and continuing in the same general direction.

That on and previous to the 21st day of February, 1882, it was provided by the laws of the State of Arkansas and of the State of

Missouri, that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad, with all its rights, privileges, franchises, immunities, real estate and other property, the whole or a part of which was in the State of Missouri, and constructed, owned or leased by any other company if the line or lines of the road or roads of said company were connected and continuous, and that any railroad corporation incorporated under the laws of said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease or otherwise dispose of the whole or any part of its railroad with all the rights, privileges, franchises and immunities thereunto belonging or in anywise appertaining to any connecting railroad or any railroad corporation then or thereafter organized under the laws of said State of Missouri, or of the United States, or of both.

That in the manner provided by the statutes of the States of Missouri and Arkansas, said St. Louis, Arkansas & Texas Railway Company, Consolidated, did on the 21st day of February, 1882, convey by good and sufficient deed, to the St. Louis & San Francisco Railway Company, all of its railway in said States of Arkansas and Missouri, together with all the rights, privileges, franchises and immunities thereunto belonging or appertaining.

That said St. Louis, Arkansas & Texas Railway Company, (Consolidated), and said Missouri, Arkansas & Southern Railway Company have at all times promptly and at the times required by law complied with the law requiring them to make an annual report to the secretary of state in the manner and at the time prescribed by law and at all times complied and fulfilled the conditions and terms of their respective charters.

And defendant avers that by the statutes of said State in force at the time, said State of Arkansas did enter into a contract with said Missouri, Arkansas & Southern Railway Company, by which the said State granted to said railroad company, its successors and assigns, the privilege and franchise of making and fixing reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize a profit of not less than fifteen per cent. per annum on its capital actually paid in.

That by the laws of said State in force as aforesaid it was also provided that any company with which said Missouri, Arkansas & Southern Railway Company might consolidate, should possess all the franchises, powers, rights and privileges possessed at the time of such consolidation by said last-named company, that by reason and force thereof said St. Louis, Arkansas & Texas Railway Company, (Consolidated), acquired and possessed the same rights, powers, privileges and franchises which belonged or appe-tained to said Missouri, Arkansas & Southern Railway Company.

That at the time of such consolidation, said Missouri, Arkansas & Southern railway had not yet been completed; that the line pro-

posed, and which was afterward constructed, was laid out and surveyed through a mountainous and almost wholly uninhabited country; that the expense of constructing the same promised to be very large, and the probable business which said road would receive for a large number of years would not justify the expenditure.

That said railway company was without means, as was also said St. Louis, Arkansas & Texas Railway Company, (Consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's complaint mentioned are situated.

That relying upon the faith of the contract and agreement of said State of Arkansas with said railroad company aforesaid, that no regulation of its right to charge rates, fares or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., said St. Louis & San Francisco Railway Company, did purchase of said St. Louis, Arkansas & Texas Railway Company, (Consolidated), aforesaid, its line of railway, and did assume all its debts and obligations, in express consideration of obtaining the right and privilege to exercise the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually paid in.

That relying upon the faith of the contract aforesaid of said State with said companies, numerous parties were induced to and did buy the bonds of said St. Louis & San Francisco Railway Company secured upon the railway of the said Missouri, Arkansas & Southern Railway Company, and the franchises, privileges and immunities thereto appertaining.

That said railway, although completed for about five years, has never at any time earned an amount equal to three per cent. on the capital actually paid in; that the earnings of said railroad for the next ensuing two years will not exceed three per cent. on the capital actually paid in, and that if defendant is required to charge no more than three cents per mile on said line of railway, its net earnings will be so reduced that no profit whatever will insure to the owners thereof.

And defendant avers that the incorporation of the Missouri, Arkansas & Southern Railway Company; the consolidation of the railroads, as aforesaid; and the sale of the consolidated railroad to the defendant as well as the mortgaging thereof by the defendant company, were each and all contracts made and entered into upon the faith that the contract of the State of Arkansas with said several companies would not be broken.

Wherefore defendant avers that the pretended law in plaintiff's complaint mentioned is in violation of the laws and constitution of the State of Arkansas, impairs the obligations of the several contracts entered into upon the faith therefore, as aforesaid, in violation of section ten, article one of the Constitution of the United States, and is null and void.

IV.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the Missouri, Arkansas & Southern Railway Company, hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently to wit: in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the St. Louis, Arkansas & Texas Railway Company, (of Missouri), and the St. Louis, Arkansas & Texas Railway Company, (of Arkansas), whereby it did make joint stock with said companies, forming the St. Louis, Arkansas & Texas Railway Company, (Consolidated.)

That subsequently thereto, said consolidated railway company, did in the manner required by the law in force at that time, sell and convey its railway, franchises, privileges and immunities thereto appertaining, to this defendant; and defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the said Missouri, Arkansas & Southern Railway Company, and said St. Louis, Arkansas & Texas Railway Company, (Consolidated), to which the defendant company has succeeded, and under which, and an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, it is authorized to and does now operate and maintain said line.

And defendant avers that by section six (6), article twelve (12), of the constitution of the State of Arkansas in force at the several dates hereinbefore mention-, it was provided, that no charter of any corporation should be altered, revoked, annulled or repealed in such a manner as to do injustice to the incorporators.

Defendant avers that if said rates of fare in plaintiff's complaint mentioned are established as a maximum beyond which this defendant cannot charge, it will not be able to earn a sum sufficient to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's complaint mentioned are situated, is one which was highly expensive to construct, and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintainance of the road in condition, exceeds the price fixed as a maximum by the pretended law aforesaid, to wit: The sum of three cents per mile.

Wherefore, defendant says that said pretended act is unreasonable and does this defendant and the incorporators of said Missouri, Arkansas & Southern Railway Company, which constructed said line of railway, and their successors who succeeded to their rights and privileges, a material injustice, and is therefore in violation of said constitution of Arkansas, and null and void.

V.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the line of railway aforesaid in plaintiff's complaint mentioned, on which the stations therein described are located, was constructed through a country which neces-itated the expenditure of large sums of money, and which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are extraordinarily heavy, and that many cuts, fills, embankments, bridges, trestles and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the sum of three cents per mile; that the charge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this manner described, is a reasonable fare and just charge, and that such sum is not *in* excessive charge for transporting passengers; that the charge of five cents per mile not being excessive, and the charge of three cents per mile being unreasonable and unjust, said pretended law is illegal and void.

VI.

Defendant for another and further answer to the complaint of plaintiff herein, avers, that said pretended act discriminates between railroads of the same class, in this, that railroads of seventy-five miles or less in length owned by separate corporation-, and not operated by corporations which own other lines of railroads are permitted, under the provisions thereof, to charge the sum of five cents per mile, while railroads of the same length and same class which may be operated or controlled by corporations owning other lines of railway within the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads.

Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discrimination between different roads of the same class and is therefore in conflict with and in violation of article 11 of the constitution of the State of Arkansas and is a denial to defendant of the equal protection of the law, contrary to the provisions of section 1 of the 14th amendment to the Constitution of the United States.

VII.

Defendant for another and further answer to the complaint of plaintiff herein, avers that the line of railroad therein described is and was at the dates therein mentioned, by the acts of the Congress of the United States, declared to be a post and military route and national public highway of the United States for postal, military and all other governmental services, and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the

Congress of the United States to itself, and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarrented and illegal, and that by reason thereof said pretended act in plaintiff's complaint mentioned is null and void as to this defendant.

VIII.

Defendant further answering, says, that the continuity of the defendant's railway between the stations of Fort Smith and Lillie is broken by the Arkansas river, across which has been constructed a railroad bridge, with the approaches thereto, connecting on either side with the tracks of the defendant's railway, and forming therewith a continuous line of railway running from Fayetteville to Fort Smith, both in the State of Arkansas; that said bridge was constructed and caused to be constructed, under the provisions and authority of an act of the Congress of the United States entitled "An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Arkansas," approved July 3rd, 1882, by the defendant company; that by the provision of said act there was expressly reserved to the defendant company or the Secretary of War of the United States, the sole and exclusive right to fix and control the rates of fares and tolls which should be charged upon said bridge and for carrying or transporting freight or passengers thereover; that the defendant company and the Secretary of War has heretofore and before the dates in plaintiff's complaint mentioned had fixed, published and announced a tariff of rates which should be charged for carrying or transporting freight or passengers over said bridge, and that by such tariff the price and sum of forty cents was fixed as the rate which should be charged solely for carrying each passenger over said bridge and the approaches thereto belonging, and that such tariff was at the several dates mentioned in plaintiff's complaint and is still in force; that of the amount charged plaintiff forty cents thereof was solely for carrying him across said bridge and the approaches thereto belonging, and such charge was duly authorized by said act of Congress of the United States of America hereinbefore mentioned, and any of the legislation of the State of Arkansas conflicting with said act of Congress is null and void and of no effect.

Wherefore, defendant prays that it be discharged and have judgment for its costs herein laid out and expended.

IX.

And for another and further answer to the complaint of plaintiff herein, defendant avers that by the laws of said State of Arkansas in force at the time of the consolidation in the third count of this answer fully set forth, reference to which is now made as though fully set out in this count, it was provided, that after the consolidation or sale of any line of railway to any connecting line, there should remain and appertain to said line so consolidated all the rights, privileges, franchises and immunities, liabilities and obligations which appertained or belonged to said company before such

consolidation, and that its condition for all purposes should remain the same as if no such consolidation had been effected; that said Missouri, Arkansas & Southern Railway Company is less than seventy-five miles in length; and defendant avers that such being the case, and the said stations in plaintiff's petition mentioned being upon a line of railway less than seventy-five miles in length, the said defendant railway company had the right to charge thereon a sum not exceeding five cents per mile.

X.

Defendant for another and further answer to the complaint of plaintiff herein, says that if the plaintiff was carried by defendant, as in his complaint mentioned, it was in pursuance of an agreement and understanding between himself and his attorneys herein that he should be carried for the sold purpose of imposing upon said railway company the penalty which is provided by said pretended enactment of the legislature of the State of Arkansas, and that any sum which he might recover herein is, under the agreement aforesaid, to be divided between himself and his attorneys herein; and defendant avers that said plaintiff was induced and encouraged to said action by such attorneys for the purpose aforesaid, and that said plaintiff herein was not a passenger for ordinary purposes but for the sole purpose aforesaid and no other.

Wherefore, defendant says that the action herein sought to be maintained is opposed to public policy and being champertous, the plaintiff should not be allowed to recover.

XI.

Defendant for another and separate answer to the complaint of plaintiff herein, says, that *of* any sum which the plaintiff herein may have paid the defendant company for any services rendered by it in the carriage and transportation of the property and the carriage and transportation of the plaintiff as a passenger, or otherwise, was voluntarily paid without protest or objection on the part of the plaintiff.

Wherefore, defendant says that the plaintiff should not upon the facts in his petition stated, be allowed to recover herein.

Wherefore, defendant having fully answered prays to be hence dismissed with all its costs in its behalf laid out and expended.

JOHN O'DAY AND
CLAYTON, BRIZZOLARA & FORRESTER,
*Attorneys for Defendant.*

[Endorsed:] Case No. 14,652. Supreme Court U. S., October term, 1894. Term No., 175. The St. Louis and San Francisco Railway Co., P. E., *vs.* M. H. Trimble. Stipulation & addition to record. Filed Nov. 22, 1894.